The Solicitors' Journal

VOL. 91 — Saturday, May 10, 1947 — No. 17

CONTENTS

CURRENT TOPICS: Rights of the Subject—New Safeguards—The Boundary Commission—Principles of Reform—More Jargon—The Bank of England—Closing Hours of Shops—Recent Decisions 239
CRIMINAL LAW AND PRACTICE 242
COMPANY LAW AND PRACTICE 242
A CONVEYANCER'S DIARY 243
LANDLORD AND TENANT NOTEBOOK 245
TO-DAY AND YESTERDAY 246
THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED 246
CORRESPONDENCE 247
OBITUARY 247
NOTES OF CASES—
Edmonds *v.* Edmonds and Rogers 248
Bulkeley, *In re*; Baker *v.* Marr 248
Diplock, *In re*; Diplock *v.* Wintle (and Associated Actions) .. 248
Askew *v.* Bowtell 249
HIGH COURT OF JUSTICE 249
THE SOLICITORS' MANAGING CLERKS' ASSOCIATION 250
PARLIAMENTARY NEWS 250
RULES AND ORDERS 251
RECENT LEGISLATION 251
NOTES AND NEWS 252
COURT PAPERS 252
STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES 252

CURRENT TOPICS

Rights of the Subject

EVERYBODY realises nowadays, whatever his party allegiance, that in an increasingly State-controlled society, such as that in which we live to-day, the problem of reconciling individual liberty with the functions of the State becomes ever more acute. Never before has it been so urgent to inform legislation—and probably also some legislators—with a sense of history and the legal safeguards of a decent life which have been our heritage for centuries. The tendency to diminish the rights of the individual is not exclusive to any one government, but, as noted in "The New Despotism" by the late LORD HEWART and Dr. C. K. ALLEN'S "Law and Orders," is a general tendency of the times. The Liberal Party is to be congratulated on having secured the introduction on 24th April, in the House of Lords, by its leader, the MARQUESS OF READING, of a comprehensive Preservation of the Rights of the Subject Bill. Broadly speaking, it is designed to limit the exercise of those statutory powers (such as the power of search by government officials) which involve an invasion of personal freedom, to strengthen the control of Parliament over the action of the Departments, boards and officials, and to assure that where legal issues are involved, the citizen will always enjoy his right of access to the courts. The Bill embodies, among other proposals, those of the Donoughmore Committee, which though made in 1932 were never acted upon by any subsequent government. The Bill is far from premature. Even though we still breathe the air of comparative freedom the dangers lie very much on the surface and the individual must be protected.

New Safeguards

How our liberties are to be safeguarded has, it is clear from the clauses of the new Rights of the Subject Bill, been the subject of close thought by those who framed it. It proposes more effective Parliamentary control over delegated legislation by means of Parliamentary amendment instead of the present method of either approving or rejecting rules and orders as a whole. It further proposes that, in the few cases where a limitation to the period for challenge of a rule or order in the courts is deemed necessary, that period should never be less than three months. Powers of Ministers to modify statutes should, it is recommended, cease to be exercisable twelve months after the coming into operation of the Act creating them. Appeals from Ministers' decisions in the exercise of judicial power are provided for, and the report of the person holding a public inquiry, it is provided, should be published, and the Minister should give reasons for his decision. Other important features of the Bill are the limitation of the exercise of powers of search of private premises and the abolition of the right to suppress or suspend any publication whatsoever. Offences against the Agricultural Marketing Acts should be tried in local magistrates' courts, and not by marketing boards in London, which are bound by no rules of evidence. The anomaly of the shorter period of limitation for actions against public authorities will be abolished if the Bill is passed in its present form. More than most Bills, this must be regarded as the basis of debate rather than the finished article, and, while as lawyers we cannot withhold approval of its general principles, we may be permitted to express a hope that the rights of the subject to inexpensive representation before tribunals by those who are trained to put forward clients' cases honourably and adequately may be re-established by a further clause in the Bill.

The Boundary Commission

THE first proposals of the Boundary Commission were published on 2nd May, 1947. Many of them are not unexpected, and will commend themselves to all except those who are averse to any break with the past. For sentimental and historical reasons the break may be none the less painful, though necessary, as in the cases of Huntingdon, the Isle of Ely, the Soke of Peterborough and Rutland, which, the Commission considers, "are not effective and convenient units for county council government, lacking as they are in population and the resources to provide adequate and modern services." Problems of war damage, as well as of finance and effective administration, influence the other recommendations. Liverpool is to be extended, but Bootle and Crosby are to be united in a separate authority with other districts, on account of the enormous problems of reconstruction in that area. War damage considerations have also affected the decision to extend the boundaries of Plymouth and Hull, but in the latter case owing to the effect on the resources of the East Riding County Council of the incorporation of Haltemprice into Hull, the order for Hull will not be made operative before 1st April, 1949, by which time the new block grant which is intended to cover the county authorities for losses in rates will be in operation. The problem of these losses is most acute in Lancashire, where an extension of the boundaries of all the many boroughs as put forward in proposals to the Commissioners would create "a solid block of county boroughs throughout the whole of South and East Lancashire and parts of North Cheshire." In the meantime decisions have been made as to Liverpool and Bootle and announcements will soon be made about Oldham and St. Leonards.

Principles of Reform

THESE recommendations must be read in the light of the general principles laid down in the Boundary Commission's first annual report which was recently published by H.M. Stationery Office, price 4d. The object of the Commission's work, to quote its own words, is to make all local government authorities, both individually and collectively, effective and convenient units. "Mere formulæ," according to the report, will not improve local government. Each area has its own characteristics, which must be examined on the spot. Alterations of boundaries are being asked for by thirty-seven counties and eighty county boroughs, while forty-four authorities are asking for the creation of thirty-three new county boroughs. For the time being the Commission is making no decision giving or taking away county borough status, as many difficulties, principally that of the Exchequer block grant, remain to be considered. The Commission favours the county borough as an effective local government unit and suggests, if allowed by statute, that it would be better to unite them with neighbouring districts as in the case of urban districts, than to extend their boundaries. The danger that local politics will suffer through loss of local interest seems to be present to the mind of the Commission, which suggests that consideration should be given to the preservation and extension of machinery for expressing and maintaining local interest. Small towns, for example, could retain their charter and privileges, but should cease as units for the carrying out of local government functions.

More Jargon

SOME weeks ago reference was made in these columns to the misconception which has gained currency among the ignorant, that certain kinds of jargon words such as "global," "escalation," "overall," "ceiling-price" and so on, originated among the lawyers. As every lawyer knows, whatever ancient forms of language may have survived the centuries of a necessarily slow legal development, these newer polysyllables neither originate from nor are favoured by lawyers. An example of this fact occurred on 28th April when Mr. Justice Denning said during the hearing of a pension appeal that medical opinions should be put forward in such a way as to be intelligible to a layman, because there were laymen on the pensions appeal tribunals which had to consider those opinions. The report in the case before Mr. Justice Denning defined "retinosis pigmentosa" as an "innate form of abiotrophy in which the rods and cones lose their vitality apart from any interference with nutrition." This definition of the unknown through the more unknown merited a less mild reproof. No one objects to medical men talking Greek and Latin among themselves, but when they wrap what they have to convey to non-medical tribunals in their technical jargon, lawyers may well protest without fear of the retort, "you are another." Although hampered by ancient forms of speech more than most professions, lawyers do not in expounding the law to clients or tribunals either seek to achieve unintelligibility or avoid the plainer forms of human speech.

The Bank of England

THE "City Notes" of *The Times* of 1st May made the cautious criticism of the annual report of the Bank of England, published that day, that the scantiness of information in the report, its summarised balance sheet and the absence of a profit and loss account, should not serve as a model for other publicly owned enterprises. The writer stated: "A publicly owned banking institution may justifiably claim a much higher degree of privacy for its affairs than a publicly owned industrial corporation, just as the Companies' Bill would allow a privately owned banking company much more privacy than the general run of industrial and commercial companies. Even so, it is widely thought that the Bank's reticence, now as hitherto, is exaggerated." The fact that this is the first report of a year in which the Bank of England has been under public control makes the Bank's failure to depart from its usual reticence all the more interesting. No doubt there are reasons why a temporary change in the assets of a banking institution should not be subjected to every idle breath of public controversy, but the essence of national control is that vital changes should be the subject of discussion. If the increasing democratisation of company law and procedure recommended in the Companies Bill now before Parliament is to have any meaning, it should extend to companies under public control at least equally with those which are free of Government control. The mere lawyer awaits instruction from the economist as to why an income and expenditure account is unnecessary in the case of the nationalised bank.

Closing Hours of Shops

THE report of a departmental committee on the closing hours of shops appointed on 1st January, 1946, has now been published (Cmd. 7105, H.M. Stationery Office, price 9d.). It accepts as settled policy the principles of compulsory evening closing and compulsory half-day closing once a week, but adds that existing shops legislation exemplifies the maxim that hard cases make bad law. There are too many exemptions; the law tries overmuch to combine the incompatibles of compelling shops to shut and allowing people to buy. This has had disastrous consequences, especially in mixed shops; in certain respects the law is neither observed nor enforceable, and has been brought into contempt. The only practicable remedy is to cut down exemptions. With regard to the Shops (Sunday Trading Restriction) Act, the report says that it has not yet been properly tested by experience, and it does not recommend any amendment of it except to meet one or two defects that have already actually disclosed themselves. The report also observes that the shops legislation is obscure and complicated, largely because it is contained in so many different Acts of Parliament, as was pointed out by LORD HEWART, L.C.J., in *L.C.C.* v. *Lees* (1939), 160 L.T. 281. Another important recommendation is that trading elsewhere than in a shop should, with certain exceptions, be brought within the scope of the Acts.

Recent Decisions

In *Voller* v. *Portsmouth Corporation and Others*, on 29th April (*The Times*, 30th April), Birkett, J., held in a case in which a doctor in a hospital found it necessary to administer a spinal injection and a bacillus of meningitis entered the patient's body from without at the time of the injection, that there must have been a breach of the aseptic technique of the hospital, as the surface skin of the plaintiff was properly cleansed before the operation and the doctor prepared himself in the approved way by washing his hands, and did all that was required; the only remaining source of infection was the apparatus used, for which responsibility was on the nursing staff of the hospital, the servants of the first defendants, and therefore the first defendants were liable (*Gold* v. *Essex County Council* [1942] 2 K.B. 293). His lordship awarded £12,000 damages, the main injuries being paralysis of both legs.

In *Perrins* v. *Pye* on 2nd May (*The Times*, 3rd May), a Divisional Court (the Lord Chief Justice and Atkinson and Oliver, JJ.) held that a registration officer for the purposes of the Representation of the People Acts was not entitled to aggregate the rateable values of the premises which a householder occupied, for the purpose of deciding whether the householder was qualified and liable to serve on a jury.

In *Wiltshire County Valuation Committee* v. *Boyce*, on 30th April, a Divisional Court (the Lord Chief Justice and Atkinson and Oliver, JJ.) held that two houses let by a vicar and churchwardens were exempted from rates by the Ramsbury Enclosure Act, 1777, and as no scheme had been made their exemption from rates by Act of Parliament must continue. The fact that they had let the land on lease did not prevent the houses from belonging to them within the meaning of the Rating and Valuation Act, 1925.

CRIMINAL LAW AND PRACTICE

APPEALS AND BINDING OVER

I AM grateful to a correspondent for raising a matter arising out of my remarks (*ante*, p. 155) on "Binding over in assault cases." He writes: "The article shows that the justices have jurisdiction. But what is the complainant's remedy when that jurisdiction is exercised but the evidence does not justify the binding over? Is this an appeal to quarter sessions—or to a case stated to the High Court? The appeal by case stated would appear to be of no value as there would be no point of law and the order would not be invalid on the face of it."

The answer to the first part of the question depends on the interpretation of s. 37 (1) of the Criminal Justice Administration Act, 1914, which extended the right of appeal to quarter sessions to any person aggrieved by any conviction of a court of summary jurisdiction in respect of any offence, provided he did not plead guilty or admit the truth of the charge.

There must, accordingly, be both a "conviction" and an "offence." Does the binding over of a person in his own recognisances to keep the peace constitute or necessitate a conviction, and is it in respect of an offence?

According to the accepted definition (1 Salk. 377 and Paley on Summary Convictions, 9th ed. (1926), p. 437), it does seem to necessitate a conviction or "a record, containing a memorial of the proceedings had under the authority of a penal statute before justices of the peace, or commissioners duly authorised to receive an information and proceed to judgment."

The nearest authority for this is a case in which it was held that there was a conviction where, following a plea of guilty, an order was made that the defendant enter into recognisances to come up for judgment if called upon (*R.* v. *Blaby* [1894] 2 Q.B. 170).

The difficulty in the case of a binding over under the Offences Against the Person Act, 1861, is that the person bound over is frequently a prosecutor who is given no opportunity to plead guilty or not guilty, and very often, especially in cases where he is not asked whether he will consent to be bound over or not, is given no inkling of the fact that he is as much on trial as the defendant against whom he has made complaint, until, to his bewilderment, he finds himself bound over to keep the peace.

On the whole, however, it is fair to resolve all doubts in favour of such a binding over necessitating a conviction. If further authority is desired reference may be made to *Harris* v. *Cooke* (1918), 83 J.P. 72, where Darling, J., cited *R.* v. *Rabjohns* (1913), 77 J.P. 435, to the effect that the word "conviction" when used in statutes sometimes means the finding that the accused person is guilty and also the sentence of the court.

The question whether an "offence" has been committed by a prosecutor who is bound over to keep the peace is fraught with more difficulty. "*Prima facie* an offence is equivalent to a crime," said Collins, J., in *Derbyshire County Council* v. *Derby Corpn.* [1896] 2 Q.B. 53, 58. In *Ex parte Davis* (1871), 35 J.P. 551, Blackburn, J., is reported to have said that where a certificate of dismissal is granted, the justices may order the defendant to enter into recognisances to keep the peace, which, as Blackburn, J., said, is a precautionary measure to prevent a future crime, and is not by way of punishment for things past. This would appear to be *a fortiori* the case where a prosecutor is bound over. It is, therefore, impossible to say that an appeal lies to quarter sessions from such an order by a magistrate's court.

There is nothing to prevent a case being stated for the Divisional Court on such an order, and indeed this is sometimes done. In *Lort* v. *Hutton* (1876), 40 J.P. 677, the question of law was argued whether the justices were right in refusing to allow a person, against whom an application for sureties had been made, to be sworn. Blackburn, J., emphasised that the binding over was not a punishment but only "a process to avert danger," and held that the justices had no alternative but to bind over the respondent, and were not obliged to hear his evidence on the matter.

It is, however, quite true that it would be difficult to find a point of law on which to state a case. The remedy of binding over appears to be one entirely for the satisfaction of a subject who apprehends violence, and whether his apprehension is real or imaginary appears to be a matter lying within the discretion of the magistrates to decide.

NULLUM TEMPUS OCCURRIT REGI

A charge of fraudulently converting £1,400 some seventeen years previously was dismissed after three hearings at Marlborough Street magistrates' court on 10th April, when it appeared finally clear that the prosecution would be unable to produce some essential documents, which had been lost, and would be unable to prove the identity of the man in the dock.

Apart from what might be called the natural erosion of time on the memory and other instruments of proof, it is true in the majority of cases, but no longer wholly true, that *nullum tempus occurrit regi* applies so as to enable a prosecution to be brought at any time after the date of the alleged commission of the crime, without any period of limitation being applicable.

Where offences are summarily punishable the summary proceedings must be commenced within six months of the offence, except where some other period is specified in the statute creating the offence or in the case of continuing offences: Summary Jurisdiction Act, 1848, s. 11.

There are quite a number of offences for which periods of limitation are laid down for prosecutions by indictment. Customs prosecutions (three years—Customs Act, 1876), corrupt or illegal practices at elections (one year and two years in some cases—Corrupt and Illegal Practices Act, 1883, s. 51), and certain offences against girls (six months—Criminal Law Amendment Act, 1885, s. 5, as amended by the Prevention of Cruelty to Children Act, 1904, s. 27) are a few of these.

It is, however, still a maxim of fairly general application that *nullum tempus occurrit regi*; but prosecutors should be warned against instituting proceedings which might appear to the court to be stale.

COMPANY LAW AND PRACTICE

LEGAL AND EQUITABLE INTERESTS IN SHARES

THE question of the point of time at which a person acquired a complete legal title to shares in a company arises from time to time in the cases of deposits of blank transfers. In such transactions, however, it is first of all necessary to distinguish between shares in companies, the constitution of which requires transfers to be by deed, and those in companies where no such requirement exists.

An example of the former class of companies is to be found in companies incorporated under the Companies Clauses Act and further examples may occur in the case of companies incorporated under the Companies Act whose articles expressly require transfers of shares to be by deed. Although most transfers of shares in such companies do in fact take the form of deeds, it is only rarely that the form of a deed is necessary, for most articles contain a provision similar in form to cl. 18 of Table A, which starts off by saying that shares shall be transferred in the form which it sets out and which is not in the form of a deed, or in any usual or common form which the directors shall approve.

Where the company's constitution requires a transfer to be by deed a transfer in blank is void unless redelivered after the blanks have been filled in, and as a deed it is inoperative, though it has an equitable effect as constituting an agreement to transfer. In such a case, therefore, the delivery of a blank transfer can never operate in such a way as to affect the legal right to shares.

In other cases blank transfers have a greater operation than this and can in certain events operate to vest the legal estate in the shares in the person whose name is subsequently filled in, and the point of this present inquiry is to find out at what stage of the proceedings that step is completed.

The case of *Ex parte Sargent* (1874), L.R. 17 Eq. 273, is authority for the proposition that in the ordinary case a person whose name is subsequently filled in on a blank transfer obtains a legal right to be registered in respect of the shares and is a person who, if the company refuses so to register him, can apply to the court for rectification of the register.

In the judgment of Sir G. Jessel, M.R., in that case, there is to be found a very clear explanation of the usual effect of the deposit of a blank transfer, which is substantially as follows: A borrows from B and deposits with him as security transfers of certain shares not quite filled up, that is, there is no date and no name of the transferee, i.e., blank transfers. A also hands B the certificates for the shares. Without express words B is authorised, and intended to be authorised, by A, if necessary, to fill up the blanks and get the shares registered. B, like every other mortgagee, has a right to reborrow and transfer his security.

In this case B did reborrow from C. C was not paid and he eventually filled up the transfers with his own name as transferee and submitted the transfers to the company, and thereupon, as was held by Sir G. Jessel, he became legally entitled to be registered in respect of those shares.

A distinction must, however, be recognised here. He became legally entitled to be registered in respect of the shares in the sense that he was entitled to apply to the court for rectification of the register by inserting his own name thereon as the holder of the shares, but he did not acquire the legal title to the shares immediately by the mere act of filling in his name on the blank transfers.

The rights which a person who properly fills up blank transfers in his own favour acquires were explained by Lord Selborne in the case of *Société Générale de Paris* v. *Walker* (1885), 11 App. Cas. 20. In that case the articles of the company required transfers to be by deed, and consequently any blank transfer which was subsequently filled up required redelivery, but at p. 28 Lord Selborne said: "But even if there had been [evidence that the transfer had been redelivered after completion] I should not myself have considered a merely inchoate title by an unregistered transfer equivalent for the present purpose [i.e., a question of priorities] to a legal estate in the shares. Such a transfer might, indeed, give a legal right of action against the company if they, without just cause, refused to register it; it might also be a good foundation for an application to a competent court to rectify the register. But it could not . . . confer (while unregistered) a legal title to the shares themselves."

It seems most improbable, if this is the position in the case of a transfer by deed redelivered but not actually registered, that different principles would apply to a transfer under hand which had been completed but not actually registered.

Had the question been allowed to rest there, no difficulty could arise. If you wanted to know whether a person had a legal title to any shares, you would merely have to inspect the register, and if he was on it in respect of those shares he had a legal title, and if he was not, then he had not.

Unfortunately, however, the matter is not so simple, for Lord Selborne went on to say that, if all necessary conditions had been fulfilled to give the transferee as between himself and the company a present, absolute, unconditional right to have the transfer registered before the company was informed of the existence of a better title, the case might be different. The inquiry whether or not the transferee had such a right against the company may prove a very difficult one, and the result will depend on what steps the company has taken.

Referring to that case in the subsequent case of *Roots* v. *Williamson* (1888), 38 Ch. D. 485, Stirling, J., collected the following propositions from the judgment of Lord Selborne:—

(1) A merely inchoate title by an unregistered transfer is not equivalent for the purpose of defeating a pre-existing equitable title to a legal estate in the shares.

(2) The title by transfer is to be deemed inchoate only (within the meaning of the last proposition) until (at the earliest) all necessary conditions have been fulfilled to give the transferee, as between himself and the company, a present, absolute and unconditional right to have the transfer registered.

(3) A company which, before a transfer has ceased to confer an inchoate title only, receives notice of a prior equitable title, is not necessarily bound to act upon such transfer so as to effectuate a fraud till then incomplete.

In that case Stirling, J., further held that under the articles there in question it was not sufficient for the transferee, in order to complete his legal title to the shares, to deposit at the office of the company a transfer in his favour which was apparently unobjectionable, but that when it was so left the officers of the company charged with the duty of receiving the transfer should examine it and ascertain whether it complied with the requirements of the deed of settlement, and that it was not until the transfer had been accepted by the company as a proper transfer that it became effectual as between the company and the transferee.

It is, I think, quite clear that there can hardly ever be a case where the officers of the company are not required to investigate a transfer of shares to some extent at least. In all cases, for example, the directors should satisfy themselves that it is properly stamped, because if the matter came to be considered in a court of law and it were proved that the consideration was not properly stated the transfer would be inadmissible as evidence, and the directors would have no justification for having taken one name off the register and put another on.

It follows from this that the mere deposit of a completed transfer at the company's office will practically never give the transferee a complete legal title to the shares. That title will only be conferred after the company has accepted the transfer, though it may arise before the actual ministerial act of making an entry in the register takes place; and, where there are various equitable rights in the shares competing for priority, this moment may well be one of decisive importance.

A CONVEYANCER'S DIARY

CHANCERY PROCEDURE

It has recently been announced in the Press that a committee has been appointed, with Evershed, L.J., as chairman, to consider the practice and procedure of the High Court. No practitioner can do other than wish the committee well in its task. It is perhaps too much to hope that the White Book's bulk will thereby be sensibly reduced, but possibly something can be done to arrange with the authorities to allow it to be printed rather more often, and for it to be complete.

English law grew up originally as a system of remedies; it has been said that it was secreted in the interstices of procedure. But I hardly think that it is at present in a phase where the Rules of the Supreme Court are, or ought to be, a vehicle for the development of substantive law. I am

told that the common law is developing vigorously, and indeed that Denning, J., made legal history in *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] 1 K.B. 130. But it seems to me quite plain that the branches of the law administered in the Chancery Division are mainly static. There is not any matter of major principle that is unsettled. Nor is there the likelihood of any major statutory reform. It is, I think, to this generation that the legal historian of the next property-owning civilisation will look back for the final condition of the English system of property law, as we do to Justinian for the final system of Roman law.

Our problems are thus of a fairly simple kind. Nothing is needed save that there should be a simple, intelligible and expeditious code of rules for bringing matters before the court so that the ascertained law can be applied. Though few would quarrel with the main principles of pleading in use since the Judicature Act, 1873, there are still altogether too many traps for the unwary, and it is not always possible to discover them except by falling into them. This process is not altogether popular with litigants, who are the main people to be considered.

Altogether the most important procedural reform that is called for in matters with which this column is concerned is that there should be transferred to the Chancery Division the entire Probate jurisdiction. It is indefensible except on historical grounds that an entirely different tribunal shall adjudicate upon the meaning of a will from that which adjudicates on its validity, a process which often requires the court to interpret the will or alleged will. Further, it is rather anomalous that the Probate Division should retain such marked individuality in its rules and language, when the previously incompatible King's Bench and Chancery courts have so largely merged theirs.

On quite a different level is the question whether the old-fashioned payment-out petition is really needed. Money in court can be paid out on summons if it is under £1,000, or if the rights have been declared. But the average fund in court still requires to be paid out on petition, which is altogether the most cumbersome and technical process known to the Chancery Division.

Next, I wonder whether it would not be possible to devise some means whereby a judgment for specific performance could be obtained on a vendor and purchaser summons. This class of summons was invented by the Vendor and Purchaser Act, 1874, and seems to have been popular at the end of the nineteenth century and at the beginning of the twentieth; but it is seldom used in these days. I do not think that I have ever been engaged in one, nor do I remember any other member of the same Chambers being so engaged. On the other hand, writs and statements of claim for specific performance are legion. The usual question is whether a series of clumsily worded documents amounts to a memorandum, or whether some admitted facts amount to part performance. There is very seldom any dispute about the facts, and it therefore hardly seems necessary to insist on an action begun by writ, which is pre-eminently the way of resolving quarrels about fact.

Another re-arrangement which might be considered would be to allow the evidence in chief on a motion to be given orally if the party so desires. It is not every motion on which either party would exercise such an option if it were available. But I have often been impressed with the trouble and expense which are caused, particularly in the case of an urgent motion on relatively simple facts, by having to settle an affidavit, and get it sworn. And in these days of typing difficulties, the need for engrossment in a hurry causes a great deal of extra worry to the solicitors, not to mention delays and the high cost of copying.

I have already dealt with the most unsatisfactory state of the rules in relation to representation orders, in the "Diary" of 20th July, 1946 (90 SOL. J. 340), and it has also been the subject of a more recent leading article in this Journal (7th December, 1946; 90 SOL. J. 591). All I need say on this matter is that I have found no one who defends the changes made in August, 1945, the consequence of which is that it is now an unusual event if trustees can secure the protection of a representation order on a construction summons.

In proceedings under the Inheritance (Family Provision) Act, 1938, Ord. 54F has provided a system which operates most successfully for the administration of this novel and difficult jurisdiction, and there is a relatively wide power to make representation orders. But it has been pointed out to me that this rule is so worded that only an *added* party can be appointed as a representative party, while an original party cannot. Thus, if one of two executors is independent and the second is a residuary legatee, the latter cannot be appointed to represent the interest of residue, because he will have been an original defendant. This distinction seems to be due to a verbal mistake and could well be abolished.

How many of us know that if we are taking a consent order on terms of compromise to be scheduled to the minutes we must adhere to a form prescribed by Tomlin, J., and set out in [1927] W.N. 290? I was taught a rather different method of settling such minutes in the early 'thirties, and heard of the practice note of 1927 only last week, when some clients told me that minutes which I had settled and which were agreed with the other side had been rejected by the learned Master as not complying with the practice note. The result apparently is that a new appointment has had to be taken, the action will not be disposed of for a further fortnight, and costs have been wasted. What can the exact form of an order agreed by both opponents matter?

Another trap has been brought to my attention recently, on this occasion in connection with Ord. XV. Under r. 1 of that order it is provided that "Where a writ of summons has been indorsed for an account under Ord. III, r. 8, or where the indorsement on a writ of summons involves the taking of an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, an order for proper accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases, shall forthwith be made." This rule is mandatory, the operative word being not "may" but "shall." However, in a recent action for partnership accounts, where the partnership had been dissolved before action, and where the defendant did not appear, the Master refused, after consulting his colleagues, to make an order for accounts, and stated that a motion for judgment was necessary. There seems to be no authority whatever for this practice, and there is no hint of it in the White Book. If there is indeed such a practice, Ord. XV is a dead letter so far as partnership is concerned, and it had better be amended by the express exclusion of partnership from it.

Finally, I suggest that some rule could properly be enacted to the effect that the court shall, if satisfied that all parties affected are before it, deal with the matter notwithstanding any procedural error, but may if desirable visit the error of a successful party with costs. I have in mind the recent episode of the originating motions under the Public Trustee Act, 1906. In *Re Squire* [1946] W.N. 11, certain relief under that Act was sought by originating summons. At that date no rule authorised the use for that purpose of a summons, and it consequently failed. The parties had to start all over again by originating motion, which succeeded. It would be interesting to know how much the costs thrown away amounted to. After a few other cases had been dealt with by originating motion (a procedure which I can say, from personal experience of one of these later cases, is altogether more expeditious than originating summons and not any more expensive), R.S.C. No. 3 of 1946 made it compulsory to use a summons in cases under the Public Trustee Act. This reform scarcely seems an improvement, though it makes for uniformity, but the point is that nearly half-way through the twentieth century it was not only possible but inevitable for the first set of proceedings in *Re Squire* to fail altogether on purely procedural grounds. The rules ought to be so amended as to prevent the court being in that invidious position.

LANDLORD AND TENANT NOTEBOOK

PRINCIPLES AND PRACTICE OF FURNISHED HOUSES RENT CONTROL

A RECENT publication entitled "The Furnished Houses (Rent Control) Act, 1946; A Six Months' Retrospect," by L. G. H. Horton-Smith, of Lincoln's Inn, Barrister-at-Law (Justice of the Peace, Ltd., 4s. net), merits more than a review and forms the subject of this week's "Notebook." The author, who is chairman of the oldest established of the tribunals appointed under the Act, has produced an instructive and authoritative review of the working of the statute and the tribunals concerned. The booklet will prove most useful to those who have occasion to deal, whether as advisers or as advocates, with the problems created by this novel legislation. If he does not tell us all that we should like to know—I will say something about this later—this is not necessarily the writer's fault. Its chief merits are careful examination of points of law and informed criticism, favourable and adverse, of statements (and sentiments) expressed by certain tribunals and certain lay journals.

The publication is not a text-book, and not all that it contains concerns lawyers as such; and in this article I will comment only on some of such parts of the booklet as will be of interest to the practitioner.

In his introduction the author calls attention to the importance of the decisions in *Palser* v. *Grinling* [1946] K.B. 361 (C.A.); 90 SOL. J. 453, and *Property Holding Co.* v. *Mischeff* [1946] K.B. 645 (C.A.); 90 SOL. J. 454, as throwing light upon some problems which confront furnished houses rent tribunals. The Furnished Houses (Rent Control) Act, 1946, it is true, contains no provision that it is to be read together with the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, or any of them; but valuation of attendance and furniture with a view to deciding upon its "substantiality" is called for by both codes, and a number of principles and suggestions laid down by and made in the course of these two decisions, which concerned unfurnished dwellings, will undoubtedly be applicable to problems under the Act of 1946. When discussing the two authorities, I ventured to suggest that they had been wrongly decided, the history of s. 10 of the Rent, etc. Restrictions Act, 1923, having been left out of account (90 SOL. J. 485), but the hope expressed in an address to the Auctioneers' and Estate Agents' Institute on 7th November last, by Dr. Stanley Edgson, that one of the cases would be taken to the House of Lords, has not been fulfilled. So when Mr. Horton-Smith observes that the words "a substantial proportion of the whole rent" (1946 Act) are *almost* identical with those of the 1923 Act "a substantial portion of the whole rent," one can but comment that to all intents and purposes they must be treated as having the same meaning, the Court of Appeal having decided in effect that "portion" means "proportion," and that even if its decision were overruled the judgments would be valid for the purposes of guidance to furnished rent tribunals.

In the earlier sections of the body of his work, the author discusses the conditions precedent to a reference under the 1946 Act; the existence of a contract, and of what kind of a contract—later on, he usefully demonstrates that a so-called statutory tenancy created by the other Acts cannot be referred. There is a very useful section on collateral agreements; time and again those concerned with the Act have come across questions arising out of statements and representations alleged and denied to form part of the bargain. Mr. Horton-Smith cites *Angell* v. *Duke* (1875), L.R. 10 Q.B. 174, as giving us the true legal position in such cases; it is, I think, one of two authorities on collateral agreements in which a verbal promise to supply additional furniture was adjudicated upon; but it seems to be arguable whether it would support one of the propositions which the author deduces, namely "if there be a written contract to let a house together with certain scheduled furniture, no oral agreement to supply further furniture is admissible." What *Angell* v. *Duke* appears to have decided is that if the consideration for accepting the grant was the verbal promise of, *inter alia*, further furniture, evidence of that agreement was admissible and the collateral promise was enforceable.

Mr. Horton-Smith reviews at length the conflict which has raged round the question whether a lessee may withdraw his reference before the hearing, and his argument that this can be done is indeed a cogent one. At the same time it may be doubted whether, in discussing this question and, later on, the question whether a local authority can refer a contract of tenancy "on the tenant's behalf," the learned author has sufficiently directed his attention to the nature of these proceedings They are not litigation; the procedure is inquisitorial, not accusatorial, and I suggest that one argument, running "in matters of civil law, what court has the right to prevent parties from settling their differences upon terms which are mutually acceptable to themselves?" is not strictly valid. For there *are* no parties; and, it may be said, what litigant finds himself such without having been aware of any difference between himself and his opponent?

Dealing with the question whether a tribunal may have regard to the value of furniture or services to the lessee, Mr. Horton-Smith rightly points out that the provision contained in s. 10 of the Increase of Rent, etc. Act, 1923, is not introduced into the 1946 Act, and there is force in his suggestion that the omission was deliberate because when the 1946 Act comes to deal with board, its value to the lessee is made an important feature. But there is much to be said for the view that the 1923 provision was not so much an amendment as a declaration of the law, giving effect to *Wilkes* v. *Goodwin* [1923] 2 K.B. 86. The author appears to assume that furniture is to be considered of no value to a tenant if there is too much of it for the house or if he cannot appreciate its qualities—caviare to the general, as it were. But in *Wilkes* v. *Goodwin* what had happened was that the tenants had linoleum of their own which they were obliged to store because of what was let to them with the rooms; my own theory is that this is the sort of case that Parliament had in mind when enacting s. 10 of the 1923 Act.

The "overlapping" problem—should "standard rent" be disregarded—is examined with great thoroughness, and I think that most readers of the work will agree with the author's conclusion which answers this question in the affirmative.

In dealing with the subject "will rent depend at all on neighbourhood?", a question likewise answered in the affirmative, Mr. Horton-Smith is near the fringe of a problem which, I think it can fairly be said, vexes everyone who has had anything to do with these tribunals, namely, what factors do they consider relevant to the question "what is a reasonable rent?" Is a rent reasonable as long as the lessor is not profiteering, or may it be unreasonable though he is not making large or, indeed, any profits but the rent compares unfavourably with those of similar dwellings because he is a bad business man? The author's concluding observations suggest that the former is the case, but tribunals are strangely silent on this point, and all one can say is that the questionnaires authorised give one the impression that it is the cost of the *house and services* to the lessor but the market value of *furniture* that matter, the test thus being a mixed one. And what many of us would like to know is whether or not a tribunal considers not only recurrent outgoings but initial outlay, and whether, say, when considering outgoings, it has regard to the incidence of liability for repairs and, if so, the difference between the costs of maintaining an old building and that of maintaining a new one.

Mr. Horton-Smith's observations on the question whether a reduction in rent can be retrospective are lucid and convincing; one would have liked to have been given his views on the problem of forehand rent, a payment of which may fall due after application made or decision given, and give rise to awkward questions whether extension of the tenancy has been ordered or not; but perhaps the phenomenon is rather rare.

TO-DAY AND YESTERDAY

May 5.—On 5th May, 1724, the Gray's Inn Benchers ordered that "Charles Manson, Esq., a barrister of this Society, in respect of his disability, by the misfortune of the loss of his arm, of his coming into commons be allowed to assign his chamber although the five years since his call to the Bar be not expired and that he shall for the time to come be excused his castings into commons, by reason of his said disability of coming into the Hall but still liable to all other duties of the house."

May 6.—How Gray's Inn used to keep its valuables appears from an order of 6th May, 1749, "that Mr. Child's note for the India bonds be taken out of the iron chest for the interest received to be endorsed thereon." The note in the then treasurer's name was to be delivered up and a new one given in the name of the new treasurer, Patrick Garden.

May 7.—On 7th May, 1587, the Inner Temple Benchers ordered "that everyone of those that shall be hereafter called to the Bar shall moot in the Hall in the term time or vacation time and also put some case or cases at the Bench table in the term time and take and argue the Reader's case in the vacation time and also keep moots abroad in the Inns of Chancery in the vacation time and likewise keep cases at the clerks' commons and moots in the Library in the mean vacation time, or otherwise every such as shall be hereafter called to the Bar and shall fail in doing of the said exercises shall be accounted no utter barrister but shall lose his place at the Bar."

May 8.—On 8th May, 1815, the future Lord Campbell wrote to his father: "I am very apt to be dissatisfied and to think that I am going to the Devil. Yet when I examine my fee book I find the result always exceeds the corresponding period of the former year. I have not lately had any serious set-to with my Lord [Ellenborough, C.J.] but we do not get on comfortably together. He has still particular pleasure in discharging my rule or in making one absolute against me . . . I chiefly regret his brutality on the ground that it makes me so nervous and checks the fair display of my faculties. Now, as when I was first called to the Bar, when it approaches me to move, my pulse goes at the rate of 250 in a minute . . . But I am fierce enough when the combat is once begun. I never speak above two sentences without being interrupted. Then I stick up in proper style. Upon the whole, things have about as good a chance with me as in the hands of most others. Indeed there is nothing very peculiar in Ellenborough's manner to me. He is almost equally boisterous to all."

May 9.—In the Sheriff's Court on 9th May, 1839, a witness, the brother of the plaintiff, was observed to hesitate and look at his hands when questioned as to a date. He was ordered to show them and the palms were found to be written over with the dates and sums which he was intended to swear to. The plaintiff's counsel threw up his brief and a verdict for the defendant was returned.

May 10.—On 10th May, 1625, Sir Henry Yelverton became a judge of the Common Pleas. A varied political career had made him Solicitor-General and Attorney-General and in 1620 had brought him into trouble in the Star Chamber, where he was condemned to imprisonment in the Tower and a fine of £1,000. His time on the Bench was short, for he died in January, 1630.

May 11.—A letter in the Hatton Correspondence dated 11th May, 1676, contains details of the progress of an action by Lord Shaftesbury against Lord Digby, who had accused him in violent language of sedition: "My Lord Digby's counsel pleaded, in arrest of judgment, that my Lord Shaftesbury had not in his declaration truly recited the statute of *scandalum magnatum*, for the words of the statute are to this effect: 'Whoever shall say or devise any scandalous words against . . . the Lord Chancellor, Lord Treasurer . . . or any other great officer or peers of the realm,' and Serjeant Scroggs said that in the declaration '*contrafacere*' was put to signify 'devise' which could not have any such signification. This exception seemed to the judges so material that they took two days time before they would give their opinion . . . and then, upon debate, they seemed not to allow it as a material objection and were ready to have passed judgment, when Serjeant Stroud stated a new objection that the words 'or any other' were left out of the declaration . . . and thereby the very sense of the statute was altered. Upon this the judges have taken time to consider till the second Saturday of the next term . . ." Shaftesbury finally recovered £1,000.

Choosing the Jury

At the opening of the Rubinstein trial which concluded recently in New York, two days were occupied in examining a hundred and twenty-five persons to find a jury of twelve. The delay in empanelling this jury is said to have been the longest in the history of the New York Federal Court. That sort of thing does not happen in England for, as Maurice Healy wrote, "trial by jury is essentially an English institution," and here it works efficiently and unobtrusively. But as near home as Ireland the challenging of juries was reduced to a fine art and on that alone a case could be lost or won. The challenges were made by the solicitor, and Healy has left an amusing account of how he would go to work. In the first place he might instruct counsel to move to quash the jury-panel on the ground that it had been compiled arbitrarily and unfairly. This would paralyse the business of the assizes till another panel could be formed. If such a move was out of the question, "his next duty would be to inform himself of the personal character and outlook of as many members as possible and to mark his list with emblems of a descending scale, discriminating the most dangerous from the merely dangerous, the doubtful, the possibly favourable, the good friend and the ferocious partisan. The presence of a single one of the last variety would ensure that the worst that could happen to his client would be a disagreement of the jury. But . . . it necessitated all the skill of the expert gambler to put one's challenges to the best advantage. With only one left, it might be the wiser course to let a doubtful man go unchallenged and reserve the last for the possibility of a dangerous man being called." In the provinces the solicitors might well know the personal proclivities of every juror.

A Regrettable Error

Serjeant Sullivan, in his reminiscences, has an amusing story of an occasion when a prosecution from Kerry was being heard at Cork. Charlie Morphy, the Crown Solicitor, was not on his own ground and, as the case had a political flavour, he applied the then usual rule when working in the dark: "Every man with a native Irish name was to be treated as a Nationalist extremist; every man with an English or Scotch name was to be admitted to the jury-box." The name "Michael Joseph O'Sullivan of Blarney Lane" was called out. To Morphy it reeked of Fenianism and he ordered him to stand by, though as it happened he was a personal friend of the judge, William O'Brien, and of a turn of mind that would find for the Crown at all costs, having once expressed the opinion that "these are no times to be bothering about evidence." The result was a painful scene for the Crown Solicitor. The judge, "aiming his two surviving teeth at one another to lend emphasis to his remark," threatened to report to the Attorney-General the insult offered to so worthy a citizen, accused Morphy of "gross and Boeotian stupidity," and was further enraged on finding that the jurors, having been ordered to stand by, albeit in error, could not now be sworn.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL REPORT

The fifty-eighth annual general meeting of the Society was held at 88–90, Chancery Lane, on Tuesday, 6th May, the chairman, Mr. W. Alan Gillett, presiding. The chairman, in his statement which accompanied the report and accounts, said:—

"In moving the adoption of the report and accounts for 1946, I am pleased to be able to place before you a result which shows a substantial return to our pre-war prosperity. Our sales during the year were 80 per cent. above those for 1945, and some 40 per cent. above those for 1938. Taking into account the comparative price levels, the volume of our sales in 1946 was thus little short of that of the highest pre-war year. This recovery reflects the vast increase in legal work, particularly conveyancing, during the year, but would not have been possible had we not at least retained—and probably extended—our goodwill during the difficult war years. Nor would the recovery have been so rapid had not all the staff made great efforts to regain the ground lost. Supplies were substantially better than during the war years, but still fell far short of demands, in spite of strenuous efforts to secure all that was available. Unfortunately the paper position has this year deteriorated considerably and is preventing our approaching our pre-war service. I would again urge shareholders and customers in their own interests to exercise the strictest economy in the use of paper of all kinds.

As expenses at departments have not increased in proportion to turnover, the trading-profit shows a larger percentage increase than sales. An increase in expenses is, however, to be expected this year. The level of our prices is being closely watched as it is our aim to provide the best possible service at a competitive price. An increase in printing costs in November last, resulting from higher wages and reduced hours has, in the main, not been passed on to customers.

The dividend recommended is at the rate of 15 per cent., and it is proposed that £20,000 shall be placed to a Rebuilding Reserve, to be used in meeting the considerable expense which will be incurred when we are able to rebuild our Fetter Lane premises.

We have now received from the Board of Trade practically the whole of our claims for lost machinery and furniture and our accounts have been adjusted accordingly. The difference between the conservative book value of what was destroyed and the replacement value on the basis of which the claims were agreed has provided a substantial surplus, which has been, and will be, used to write down replacements, many of which have had to be bought at the present scarcity prices. We are taking every opportunity to add to and modernise our equipment, and we have placed orders for a number of further machines for future delivery.

In view of the demands on our printing and binding facilities and the urgent need to increase them, the Directors, after making extensive inquiries, purchased the plant and goodwill of the business of W. Hodson, Lewis & Co., Limited, whose factory at New Cross has been taken on lease. The employees of the business, some forty in number, have joined the Society and have adapted themselves with speed and energy to its standards. The purchase has already amply justified itself in the increased output obtained.

The present low interest rates and the rise in the levels of salaries and wages have caused an actuarial deficit in the Staff Pension Fund, not an uncommon experience in similar funds elsewhere. The deficit arose mainly in respect of contributors who had been with the Society for over ten years and had given much good service, and the Directors thought it appropriate that the deficit should be made good by the Society without an increase of contributions. The trustees are taking steps to avoid a further deficiency.

In December last Sir Harry G. Pritchard resigned his position as Director. The Board received his resignation with very great regret. Sir Harry joined the Board in 1940 to fill a vacancy as a matter of urgency; he came at an age when most men would be seeking relaxation from, instead of addition to, his work, and at a time when the war was causing the Society to pass through as difficult a period as it has experienced in its history. I desire to express on behalf of the Society our high appreciation of the services he has rendered during the past six years and, particularly, of the great experience and wise counsel he placed at our disposal at all times. We are very pleased to have his son, Mr. Hugh Wentworth Pritchard, with us in his stead.

The expansion of the Society's business has brought problems of increasing magnitude and importance which require the attention of our General Manager and his staff. The Directors have carefully considered with him the reorganisation of the administration at Headquarters. Mr. Aldworth, who returned to the Head Office in 1945, after a distinguished Army career, has been made Assistant General Manager and is giving valuable assistance. Other positions have been filled by persons of suitable experience, and I believe we now have a team at Headquarters from whom we may expect even greater things.

The most sincere thanks are again due to our General Manager, Mr. F. J. Holroyde, and all our staff of whatever grade or length of service. The past year opened with great hopes after the years of war. As the year drew on, difficulties of many kinds arose, mainly from lack of adequate supplies of materials, culminating in the disastrous shortage of fuel and curtailment of electric power on which we rely so largely in our works. This event cast a dark shadow over us, against which, however, the loyalty and energy of all our staff shone brightly. It was a refreshing and stimulating experience to observe how all concerned did their utmost to minimise the damage occasioned by this disaster and to continue all service possible to our customers.

The immediate future must depend to a large extent on factors outside our control, particularly the supply of paper and other materials. Our returns so far this year, although adversely affected by the fuel crisis, give us reasonable hope that our sales may be maintained at last year's level, but, as I have indicated, production costs and working expenses will be higher. If conditions continue favourable, the Directors hope to pay an interim dividend in the autumn in accordance with our previous practice.

The report and accounts were unanimously adopted. The retiring Directors, Mr. Hugh Wentworth Pritchard and Mr. William Alan Gillett, were re-elected.

The auditors, Messrs. Fuller, Wise, Fisher & Co., were reappointed. The meeting closed with a vote of thanks to the chairman and Directors.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Law of Bailment

Sir,—Whilst the laws on bailment generally are very commendable, I am conscious of a very serious defect in them which I feel should be remedied.

Where there is a bailment for reward, e.g., by the delivery of an article to a firm or person to have some work executed upon it, then according to the present state of the law if the premises upon which the goods are received are broken into and the subject-matter of the bailment is stolen the bailee is not responsible to make good the loss, and the bailor is left without any claim or remedy.

As the law stands at the moment unless the bailee can be proved to have been imprudent or negligent the bailor is in an unenviable position.

It appears to be undoubted that the bailee for reward is under no obligation to insure his premises to cover himself in the event of robbery, but surely where a person or firm, as for example clothes repairers or cleaners, accepts valuable garments for the purpose of having the same cleaned or repaired, he or the firm should be under a legal obligation to insure, and his or the firm's neglect to do so should be classified as negligence as applicable to the law of bailment.

In these difficult times for getting clothes or new material, apart from the coupon problem, it does not seem consistent with justice that an aggrieved person under the circumstances I have outlined should be placed in the intolerable position I have indicated in this letter.

Newcastle-on-Tyne. SAMUEL MICKLER.

The next quarterly meeting of The Lawyers' Prayer Union will be held on Monday, 12th May, at 6 p.m. (preceded by half-an-hour for tea) in the Council Room of The Law Society. The speaker will be Mr. Frank J. Powell, the well-known Metropolitan magistrate, and his subject is "The Two Unjust Judges."

OBITUARY

MR. F. J. COLLINGE

Mr. Frederick John Collinge, solicitor, of Messrs. F. S. Collinge and Co., solicitors, of Colchester, died on Saturday, 26th April, aged forty-eight. He was admitted in 1922 and served for a number of years as a Chairman of the Court of Referees.

MR. J. HEELIS

Mr. John Heelis, solicitor, of Messrs. W. H. Heelis & Son, solicitors, of Hawkshead, Lancs, died on Sunday, 13th April, aged forty-eight. He was admitted in 1932.

MR. A. F. N. THAVENOT

Mr. Alexander Frank Noel Thavenot, C.B.E., formerly Judicial Adviser to the Siamese Government, died on Monday, 21st April, aged sixty-three. He was called by Gray's Inn in 1905.

MR. W. B. YATES

Mr. Walter Baldwyn Yates, C.B.E., Deputy Chairman of the Flintshire Quarter Sessions and formerly Crown Umpire under the Unemployment Insurance Scheme, died on Sunday, 27th April. He was called by the Inner Temple in 1881.

The Council of Judges of County Courts gave a dinner on Saturday, 3rd May, at Niblett Hall (by permission of the Treasurer and Masters of the Bench of the Inner Temple), to commemorate the centenary of the Order in Council of 9th March, 1847, which established the modern county courts. The following accepted the Council's invitation: The Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, Lord Schuster, K.C., the Chief Magistrate, the Hon. Sir Albert Napier, Sheriff S. McDonald, Mr. G. O. Slade, K.C., Mr. Registrar Hicks, Mr. George Coldstream, Mr. F. Mayell, Mr. Richard Rieu, Mr. Richard Thesiger, Mr. Hume Boggis-Rolfe and Major R. M. Snagge. The Attorney-General, the Solicitor-General and the President of The Law Society were prevented by public duties from accepting the Council's invitation.

NOTES OF CASES

COURT OF APPEAL

Edmonds *v.* Edmonds and Rogers

Lord Oaksey, Morton and Asquith, L.JJ.
18th February, 1947

Procedure — Evidence — Divorce — Husband's petition — Wife's bastardy proceedings in India against co-respondent—Witness's sworn testimony before commission and correspondence produced in Indian proceedings—Admissibility—Evidence Act, 1938 (1 & 2 *Geo.* 6, *c.* 28), *s.* 1 (1) (i) (*b*).

Appeal from an order of Wallington, J., in Chambers.

The appellant, in his petition for divorce on the grounds of his wife's adultery with the co-respondent while she was in India, took out a summons under r. 25 of the Matrimonial Causes Rules, 1944, for proof of facts by the production of certain documents. The summons was contested by the co-respondent. The husband's case was that while the wife was living in India she committed adultery with the co-respondent and had a child by him. Before the husband filed his petition, the wife, as guardian of the child, had instituted proceedings against the co-respondent in India claiming a declaration that he was the father, and an order for its maintenance. In those proceedings, final judgment in which had not yet been pronounced, the wife and others gave evidence, and correspondence was produced, to establish the birth of the child and the fact that the co-respondent was its father. The husband, by his summons, sought permission to adduce in evidence authenticated copies of (*a*) the evidence given in the Indian proceedings by a Mrs. Ingles in the form of a statement sworn before a commissioner, and transcribed and signed by him, and (*b*) the correspondence in question. Wallington, J., refused the order asked for and adjourned the matter for decision by the judge at the trial of the petition. The husband now appealed.

LORD OAKSEY, L.J., said that, apart from the question of the admissibility of the evidence, the question arose whether it was fair and desirable in the interests of justice that the petitioner should at that stage be in a position to know what evidence he was going to be able to adduce at the trial. In his (his lordship's) opinion, it was highly important to him that he should at that stage know that. The question of the weight of the evidence given by Mrs. Ingles would be entirely for the judge. The next question was whether the evidence was admissible under s. 1 (1) of the Evidence Act, 1938. It was sought to put in the statement of the commissioner who took down the evidence of Mrs. Ingles, which was said to tend to establish the facts of which Mrs. Ingles spoke on oath. It was contended for the co-respondent that the words in s. 1 (1) (i) (*b*) "in the performance of a duty to record information . . ." were totally inapt to describe evidence given before a commissioner or, it would seem, before a judge. In his (his lordship's) opinion, although those words were wide enough to cover other forms of information which might be supplied, they still were apt to cover the evidence given by a witness either before a commissioner or before a judge. Such evidence was simply a form of information supplied to a commissioner or to a judge, to whom it was given on oath and under the solemnity of legal proceedings. It appeared that the Indian court was not prepared to part with the original documents which had been put in in proceedings before it. Therefore, it would be necessary for the husband to rely on subs. (1) (i) (*b*) and produce properly authenticated copies of those documents. It was argued for the co-respondent that up to the present there were in existence no properly authenticated copies of the documents. Nevertheless, as it was of importance to the husband to know the position in which he stood and whether he could make use of the documents in question, it was proper to make an order in advance that if properly authenticated copies of the documents were produced they should be admitted in evidence. It was not necessary to discuss r. 25 of the Matrimonial Causes Rules, 1944, because, as was contended for the co-respondent, that rule could not go beyond the terms of the Evidence Act, 1938, itself. With reference to the correspondence, it was argued for the co-respondent that if photostatic copies of it, coupled with evidence as to the handwriting of the co-respondent, were produced, it would at once be admitted by the court; but, there again, it was of importance to the husband that he should know that fact as soon as possible. He (his lordship) was therefore of opinion that an order should now be made that, if properly authenticated copies in photostatic form of those letters were produced, the husband should be entitled to make use of them at the trial. The appeal should be allowed.

MORTON and ASQUITH, L.JJ., agreed.

COUNSEL: *Theodore Turner*, K.C., and *Fairweather*, for the husband; *Levy*, K.C., and *R. T. Barnard*, for the co-respondent.

SOLICITORS: *J. B. de Fonblanque: Kimber, Bull & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

CHANCERY DIVISION

In re **Bulkeley; Baker *v.* Marr**

Romer, J. 24th January, 1947

Will—Bequest to "the senior male of the next senior branch of the B family"—Effect.

The testator, by his will dated the 24th May, 1943, made a gift in the following terms: "To the senior male of the next senior branch of the B family all those possessions both movable and immovable to which I succeeded on the decease of my father the late S.B. the then head of the B family." He died in 1944. This summons raised the question whether this was a valid gift or failed for uncertainty. The testator had no brother; the persons claiming the fund were first the personal representatives of R, a brother of the testator's father (R survived the testator, dying a few months later), and second, B, who was the son of a brother of the testator's grandfather.

ROMER, J., said that he saw nothing inconsistent in the language used by the testator. He was fastening his mind on the nearest ancestor who had founded branches of a family, namely, his grandfather, who had founded three branches. The testator's father had been head of the senior branch: the head of the next senior branch of the family would be R, if he were still alive. Had R had issue they would have been the testator's first cousins, who would have formed a branch of the testator's family separate from that to which he himself belonged. That view was not inconsistent with the language used. He appreciated the argument that the grandfather's family represented the senior branch and therefore nobody within that branch could represent the next senior branch, and accordingly it was necessary to go back to the family unit represented by B. That construction was not a natural one and would have excluded R's sons if R had any. The property accordingly passed to R's personal representatives.

COUNSEL: *J. F. Bowyer; R. L. Edwards; Pennycuick; Hewins; J. V. Nesbitt.*

SOLICITORS: *Blundell, Baker & Co.*, for all parties.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Diplock; Diplock *v.* Wintle (and Associated Actions)**

Wynn Parry, J. 11th March, 1947

Administration—Mistaken construction put on will—Residue wrongly distributed among charities—Mistake of law—Action for money had and received not maintainable—Distribution made by cheque—Cheques paid into banking accounts of charities—Right of next of kin to follow at common law—Equitable doctrine of tracing.

Witness actions.

The testator D, who died in 1936, by his will directed his executors to divide his net residuary estate between such "charitable institution or institutions or other charitable or benevolent object or objects in England" as his executors in their absolute discretion might select and in such proportions as they might think proper. During the years 1936, 1937 and 1938 his executors distributed £203,067 between some 139 institutions. Each of these institutions was a charitable institution within the phrase "legal charity." In September, 1939, the executors were notified that the testator's next of kin challenged the validity of the residuary gift and on the 18th October, 1939, the executors wrote to each of the institutions informing them that the validity of the payments made by the executors was questioned. A summons was taken out to have the will construed, and it was held by the House of Lords in *Chichester Diocesan Panel and Board of Finance (Incorporated)* v. *Simpson* [1944] A.C. 341; 88 SOL. J. 246, that the trust of residue was void for uncertainty. The plaintiffs, who were D's statutory next of kin and the judicial trustee of his will, started some 120 actions to recover the moneys given to the charities. In April, 1944, an order was made approving the compromise of the plaintiffs' claims against the executors and the personal representatives of such of them as had died. That order was without prejudice to the claims of the plaintiffs against the charitable institutions. Nineteen of the actions, being typical of the claims made by the next of kin, were heard together.

The distributions in favour of the defendant institutions had been made in each case by cheque. In the majority of the cases the cheque had been paid into the institution's current banking account, which in some cases was overdrawn at the time of payment in and in others was in credit. In some cases the cheque was paid into a separate account. In the case of a few of the

institutions the executors had made it a condition of the grant that the money should be applied for a particular purpose, as, for example, rebuilding or the purchase of equipment for the institution. In these actions the plaintiffs claimed a declaration that the institutions were liable to refund to the judicial trustee of the will the sums paid to them or, alternatively, a declaration that they were entitled to a charge on the assets of the respective institutions, which included any part of the defendant's residuary estate. It was submitted by the plaintiffs that, in the state of the authorities, it was not open to them to contend in a court of first instance that the institutions took with notice of the trust, or that they were express trustees.

WYNN PARRY, J., said that the plaintiffs contended that they had a personal claim at law against the institutions for money had and received. That action was founded on a promise to pay which the law implied when money had been paid under a mistake of fact. The action was only available when the plaintiff had paid under a mistake of fact. The executor's mistake was either a mistake as to the legal requisites for the creation of a valid charitable trust, or it was a mistake as to the construction of the will. In either case, the mistake was one of law (*Anglo-Scottish Beet Sugar Corporation* v. *Spalding Urban District Council* [1937] 2 K.B. 607). The plaintiff's claim so far as it was a claim for money had and received failed. The plaintiff's next proposition was that if a person was entitled in equity to property or to a sum of money and that property or money was transferred or paid to another person, who was not a purchaser for value without notice, the person entitled in equity had a personal claim in equity against the recipient for the value of the property transferred or the amount of the sum paid. They relied, *inter alia*, on *Rogers* v. *Ingham* (1876), 3 Ch. D. 351 ; *In re Robinson* [1911] 1 Ch. 502, and *In re Mason* [1928] Ch. 385. The institutions denied the existence of any such equity. They relied on *Hilliard* v. *Fulford* (1876), 4 Ch. D. 389 ; *In re Hatch* [1919] 1 Ch. 351, and *In re Blake* [1932] 1 Ch. 54. In his judgment the authorities established that, so far as a mere money demand was concerned, where a personal representative had paid money or transferred property, part of the estate of the deceased, to a person not entitled thereto, in such circumstances as not to make the recipient an express trustee, the only remedy open to the legatee or next of kin rightfully entitled against the recipient was either to pursue a common-law claim for money had and received in the name of the personal representative, or to pursue in equity a claim analogous to the common-law action, in which it would be unnecessary to join the personal representative as plaintiff. In either case, it was essential to show that the money was paid under a mistake of fact and not a mistake of law, a mistake in construing a will being regarded for this purpose as a mistake of law. The next point advanced for the plaintiffs was that they were entitled to follow the money into the hands of the institutions upon the principle in *In re Hallett's Estate* (1880), 13 Ch. D. 696. It was admitted that the institutions became neither trustees nor clothed with a fiduciary character until the receipt of the executor's notice in October, 1939. At common law there was a right in the owner of an asset, who was deprived of the possession of it, to follow that asset (*Banque Belge* v. *Hambrouck* [1921] 1 K.B. 321). The right was a right *in rem*. Where a person, other than the true owner, paid money into an account at his bank, and did not mix that money with any other money, the true owner could at common law follow it into that account and out of the account into any asset which could be shown to be purchased wholly with it. In equity there was the further right to trace. The equitable doctrine of tracing into a mixed mass, particularly into a banking account, where the tracers' money had been mixed with other money, rested upon the existence of a fiduciary relationship between the person into whose account the money had been paid and the true owner. Where that fidicuary relationship did not exist there was no right in equity to trace (*Sinclair* v. *Brougham* [1914] A.C. 398). On the authorities, he held that the plaintiffs were not entitled to trace into the banking account of any of the institutions into which the testator's money was paid where such money was mixed with moneys of the defendant institution. Where the institution paid money into a separate account and the money was never mixed with any money of the institution, the plaintiffs could follow into that account, and where there were moneys still standing to the credit of that account, they could claim to have such moneys paid over to them, and where there were assets shown to have been wholly purchased with moneys from that account they could claim the transfer to them of these assets, but where identification was in fact impossible, as when the asset purchased was purchased partly with other moneys, the right to follow was lost. He would make orders in the several actions applying the general principles he had laid down.

COUNSEL : *Pascoe Hayward*, K.C., *Fawell* and *J. A. Arnold* ; *J. Monckton* ; *Pennycuick* ; *Jennings*, K.C., and *Wigglesworth* ; *Andrew Clark*, K.C., and *Dunbar* ; *Goff* ; *Jenkins*, K.C., and *J. H. Stamp* ; *Danckwerts*.

SOLICITORS : *White & Leonard* ; *Thomas Eggar & Son* ; *Trollope & Winckworth* ; *Eland, Nettleship & Butt* ; *Peake & Co.* ; *Freshfields* ; *Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Askew *v.* **Bowtell**

Lord Goddard, C.J., Atkinson and Oliver, JJ. 25th April, 1947

Carrier—Public tramcar—Driver's negligence in accelerating while passenger alighting—Duties of conductor.

Case stated by the County of London Appeals Committee.

An information was preferred before a metropolitan magistrate against the appellant, a tramcar conductor, alleging that he unlawfully endangered the safety of a passenger through negligence, contrary to s. 48 of the Stage Carriages Act, 1832. On 20th July, 1946, the tramcar on which the appellant conductor was at work slowed down to a speed of one mile an hour on approaching a compulsory stopping place, and continued at the same pace without stopping. A woman passenger of eighty-four years, who wished to alight, and who believed that the tram had come to a standstill, began to leave the platform. While she was in the act of doing so the driver accelerated and she was thrown into the road. At the time the conductor was collecting fares on the top of the tramcar. He was unaware that any passenger wished to alight and he took no steps to see whether anyone was going to do so. It was contended for the conductor that the conductor of a tramcar was under no duty to see that passengers were descending safely and that, when he was engaged in collecting fares, there was no duty on him, in the absence of notice, to do anything to assist passengers in alighting. The magistrate convicted and fined the conductor. The appeals committee dismissed his appeal, being of opinion that he, by negligence, had unlawfully endangered the passenger. The conductor appealed. The driver of the tram, who was also convicted by the magistrate, did not appeal.

LORD GODDARD, C.J., said that at the material time the conductor was on the top deck of the tramcar. He was entitled to assume that the driver would stop at the compulsory stopping place and that passengers would not alight before the vehicle came to a stop. If they did so it would be at their own risk. Once the tramcar had stopped it would be the conductor's duty to see that it did not go on until passengers had got safely off and on. Here there was no evidence on which the magistrate or quarter sessions could find the conductor guilty of negligence, and the appeal would be allowed.

ATKINSON and OLIVER, JJ., agreed.

COUNSEL : *Henry Newman*, for the conductor ; *Maxwell Turner*, for the prosecutor.

SOLICITORS : *Geoffrey B. Gush & Co.* ; *Solicitor for the Metropolitan Police*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGH COURT OF JUSTICE

CHANCERY DIVISION

The Lord Chancellor has made and given the following appointments and directions :—

1. Mr. Justice Vaisey, Mr. Justice Wynn Parry and Mr. Justice Jenkins, or one or more of them, to be the Judges by whom the jurisdiction of the High Court under the Companies Act, 1929, is to be exercised.

2. Mr. Justice Romer and Mr. Justice Jenkins to be the Judges for the hearing of causes or matters proceeding in the District Registries of Liverpool and Manchester.

3. Mr. Justice Wynn Parry to be the Judge to whom references or disputes under s. 29 of the Patents and Designs Act, 1907, as amended, are assigned.

4. Mr. Justice Wynn Parry to be the Patents Appeal Tribunal under s. 92A of the Patents and Designs Act, 1907.

The following appointments and directions previously made will remain in force :—

1. Mr. Justice Vaisey to be the Judge for hearing appeals and petitions under s. 92 (2) of the Patents and Designs Act, 1907, as amended, and Ord. 53A, r. 1.

2. Mr. Justice Vaisey, Mr. Justice Romer and Mr. Justice Roxburgh, or one or more of them, to be the Judges to exercise the jurisdiction in bankruptcy.

3. Mr. Justice Vaisey to be the Judge for the hearing of proceedings under Ord. 55A, r. 4 (Guardianship of Infants Acts, 1886 and 1925).

4. Mr. Justice Vaisey to be the Judge for hearing proceedings under Ord. 55C (War Damage Act, 1943).

5. Mr. Justice Romer to be the single Judge for the purpose of hearing such appeals under Ord. 54D of the Rules of the Supreme Court (Law of Property Acts, etc.) as are to be heard and determined by a single Judge; and Mr. Justice Vaisey and Mr. Justice Romer to be the two Judges constituting a Divisional Court for the purpose of hearing and determining such appeals under Ord. 54D as, in accordance with the provisions of that Order, are to be heard and determined by a Divisional Court of the Chancery Division.

6. Mr. Justice Romer to be the Judge for the duties imposed by r. 15 (2) of the Public Trustee Rules, 1912.

In accordance with arrangements made between the Chancery Judges, Mr. Justice Vaisey will hear proceedings under the Liabilities (War-Time Adjustment) Acts, 1941 and 1944.

Lord Chancellor's Office,
House of Lords, S.W.1.
28th April, 1947.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

The Annual General Meeting of The Solicitors' Managing Clerks' Association took place on the 17th April in the Court Room of The Law Society at 60, Carey Street, W.C.2, again kindly loaned for the occasion by The Law Society.

In his address the retiring President, Mr. Alfred W. Booth, said that the year 1946 had been a strenuous one for the Association, and he referred, among other activities, to the refresher lectures given by members of the Council and the lectures on the Rent Restriction Acts given by Mr. T. Elder Jones.

The Association's scheme for voluntary examinations for solicitors' managing clerks was still being considered by The Law Society and it was hoped that progress would be made in the near future. There had been a substantial increase in membership, and the Bournemouth Branch still flourished. The Association continued to be held in high esteem in the profession. It was hoped to resume the Annual Festival Dinner in the near future.

The President thanked the Honorary Secretary, Mr. S. J. Fogden, the Honorary Treasurer, Mr. John W. Murray, the Honorary Editor of the *Gazette*, Mr. F. C. Hughes, the Honorary Secretary of Committees, Mr. C. W. G. Cook, the Honorary Librarian, Mr. A. H. Bond, and other members of the Council for their services.

In conclusion, he referred to the loyal service given by managing clerks to their employers and regretted that, while other members of the staff were being paid increasingly high salaries, there was a tendency in some firms to overlook the faithful managing clerk.

Mr. John W. Murray was elected President for the year 1947 and Messrs. E. R. Ball, A. H. Bond, James Blackburn, L. Burgin, R. H. Harvey, J. W. Sachs, Jno. Smeaton and T. M. Thurgood were re-elected to the Council. Messrs. Peat, Marwick, Mitchell & Co. were re-elected Honorary Auditors. Mr. Alfred W. Booth was elected a Vice-President.

The annual report and accounts were adopted.

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 29th April :—

ARMY AND AIR FORCE (ANNUAL).
FORTH ROAD BRIDGE ORDER CONFIRMATION.
NAVAL FORCES (ENFORCEMENT OF MAINTENANCE LIABILITIES).
TREATIES OF PEACE (ITALY, ROUMANIA, BULGARIA, HUNGARY AND FINLAND).

HOUSE OF LORDS

Read First Time :—

WELLINGTON MUSEUM BILL [H.L.]. [29th April.

To transfer to the Crown Apsley House and the site, forecourt and garden thereof and certain chattels formerly belonging to the first Duke of Wellington; to provide for the use of Apsley House partly as a museum for the preservation and exhibition of the said chattels and other chattels associated with the said first Duke or his times, and for other public purposes, and partly as a residence for the Dukes of Wellington; to amend enactments relating to the Wellington estates so as to provide for the automatic devolution of the property subject to the trusts thereof whenever there is a change in the person holding office as First Lord of the Treasury, Chancellor of the Exchequer or Speaker of the House of Commons; and for purposes connected with the matters aforesaid.

Read Second Time :—

COTTON (CENTRALISED BUYING) BILL [H.C.]. [29th April.
FELIXSTOWE URBAN DISTRICT COUNCIL BILL [H.C.]. [29th April.
NATIONAL HEALTH SERVICE (SCOTLAND) BILL [H.C.]. [1st May.

Read Third Time :—

EDUCATION (EXEMPTIONS) (SCOTLAND) BILL [H.L.]. [29th April.

In Committee :—

FOREIGN MARRIAGE BILL [H.L.]. [29th April.

HOUSE OF COMMONS

Read Second Time :—

HAVANT AND WATERLOO URBAN DISTRICT COUNCIL BILL [H.L.]. [29th April.
LONDON COUNTY COUNCIL (MONEY) BILL [H.C.]. [29th April.

In Committee :—

TRANSPORT BILL [H.C.]. [30th April.

QUESTIONS TO MINISTERS

DISPOSSESSED FARMERS

Sir W. SMITHERS asked the Minister of Agriculture how many dispossessed farmers have not received and are not receiving rent; and, in view of the fact that many of them cannot afford to employ a solicitor or a valuer, if he will take immediate steps to come to an agreed compensation with them.

Mr. T. WILLIAMS: In England and Wales, all farmers or owners of farms entitled to compensation rental under the Compensation (Defence) Act, 1939, are not receiving such rental. The usual reason for non-payment is that the party either neglects to make a claim or declines to follow the usual procedure for settlement of disputed claims. Every effort is made to reach agreement, and *ex-gratia* payments to cover the reasonable cost of employing a valuer are allowed. [28th April.

AFFILIATION ORDERS, DOMINIONS

Mr. MEDLICOTT asked the Under-Secretary of State for Dominion Affairs what progress is being made with regard to the reciprocal enforcement of affiliation orders as between this country and the Dominion countries.

Mr. BOTTOMLEY: As was explained by my predecessor in the debate on the adjournment on 19th December, 1945, very considerable difficulty is seen in the way of extending to affiliation orders the procedure provided in the Maintenance Orders (Facilities for Enforcement) Act, 1920, and corresponding legislation in Dominions. In view of these difficulties it has not been possible so far to make progress in the matter. [28th April.

CONFIRMATION OF EXECUTORS ACT (SCOTLAND)

Mr. WILLIS asked the Secretary of State for Scotland if he will consider amending the Confirmation of Executors (War Service) (Scotland) Act, 1940, to enable confirmations to be granted on a certificate by the Colonial Office.

THE LORD ADVOCATE (Mr. G. R. THOMSON): The Confirmation of Executors (War Service) (Scotland) Act, 1940, provides facilities for confirmation of executors of persons missing during the "war period" which ended on the 24th February, 1946, on the expiration of the Emergency Powers (Defence) Act, 1939. I appreciate that there are cases where difficulty has arisen in the operation of the Act, but, in present circumstances, I could not undertake to introduce amending legislation. [29th April.

HIGH COURT JUDGES' SALARIES

Mr. MARLOWE asked the Chancellor of the Exchequer whether he will introduce legislation to effect an increase in the salaries of His Majesty's High Court Judges, or afford them tax relief, in view of the fact that the salaries now being paid were fixed in relation to the cost of living in 1832.

Mr. GLENVIL HALL: No, sir.

Mr. MARLOWE: Does the right hon. gentleman know of any other instances in which salaries fixed in relation to the cost of living in 1832 have not been increased?

Mr. HECTOR HUGHES: Is the right hon. gentleman aware that these salaries are much less than those paid to high business executives and are disproportionate in view of the great service rendered by His Majesty's Judges? [29th April.

NATIONAL INSURANCE APPEALS (REPRESENTATION)

Mr. LAW asked the Minister of National Insurance whether an insured person who appeals against an insurance officer's decision not to grant unemployment benefit is entitled to legal representation when appearing before a court of referees, in order to ensure that every aspect of a case is presented to the court.

Mr. J. GRIFFITHS: The court of referees regulations allow the insured person to be represented at hearings before the court but not by counsel or solicitor. This has always been the practice. [29th April.

COURTS (EMERGENCY POWERS) ACT

Sir W. SMILES asked the Attorney-General if he is now in a position to state when the Courts (Emergency Powers) Act will be repealed.

THE ATTORNEY-GENERAL: It would be premature at this juncture to repeal the Courts (Emergency Powers) Act, 1943. Such persons as judgment debtors and mortgagors are still in many cases unable to pay their debts in full owing to war circumstances, and are, therefore, still in need of the protection given by the Act. My noble friend the Lord Chancellor is, however, considering whether and to what extent the restrictions imposed by the Act on the rights of creditors can properly be relaxed by subordinate legislation. [1st May.

RULES AND ORDERS

S.R. & O., 1947, No. 737/L.11

COUNTY COURT, ENGLAND

PROCEDURE

THE COUNTY COURT (No. 1) RULES, 1947. DATED APRIL 22, 1947

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 2 of the Administration of Justice (Emergency Provisions) Act, 1939(*), and all other powers enabling me in this behalf, do hereby make the following Rules:—

1. In Order XIX, Rule 2 (which relates to the conduct of references) the following sub-paragraph shall be substituted for sub-paragraph (*g*) of paragraph (1):—

"(*g*) the report shall be in writing and shall be filed in the court office and the registrar shall:—

(i) give notice to all parties of the filing of the report;

(ii) subject to the right of the referee or any party to appeal to the judge, fix the remuneration of the referee unless it has been agreed;

(iii) subject to the payment into court by any party of the amount fixed for the remuneration of the referee, without prejudice as to how it shall ultimately be borne, permit the parties to inspect the report."

2. *Hearing by registrar of application under s.* 17, *Married Women's Property Act*, 1882, 45 & 46 *Vict. c.* 75.]—The following Rule shall be added to Order XLVI (which relates to miscellaneous statutes) and shall stand as Rule 11:—

"11. The judge may refer any application under section 17 of the Married Women's Property Act, 1882, to the registrar who shall thereupon have power to hear and determine any such application."

3. *Married woman as next friend, etc.*]—The following Rule shall be added to Order XLVIII (which relates to general provisions) and shall stand as Rule 23:—

"23. A married woman may act as next friend or guardian."

4.—(1) These Rules may be cited as the County Court (No. 1) Rules, 1947.

(2) An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1936(†), as amended.

Jowitt, C.

Dated the 22nd day of April, 1947.

(*) 2 & 3 Geo. 6, c. 78 (†) S.R. & O. 1936 (No. 626) I, p. 282.

S.R. & O., 1947, No. 749/L.12

SUPREME COURT, ENGLAND

FEES

THE SUPREME COURT FEES (AMENDMENT) ORDER, 1947

DATED APRIL 23, 1947

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925(*), section 305 of the Companies Act, 1929(†), and sections 2 and 3 of the Public Offices Fees Act, 1879(‡), do hereby, according as the provisions of the above mentioned enactments respectively authorise and require them, make, advise, concur in, sanction and consent to, the following Order:—

1. The following Fee shall be substituted for Fees Nos. 10 and 11 in Schedule I of the Supreme Court Fees Order, 1930(§):—

Item	Fee	Document to be stamped
	£ s. d.	
"10. On entering an appearance (except an appearance in a matrimonial cause or matter):— for each person	2 6	The memorandum
11. On amending an appearance (except as aforesaid) ..	2 6	The præcipe"

2. The following entries shall be substituted for the first paragraph in the first column, and for the entry in the second column, of Fee No. 29 in the said Schedule:—

Item	Fee
	£ s. d.
"29. On entering or sealing a judgment, decree, or order, given, directed or made in the trial, hearing or further consideration of a cause or matter in court:— In an undefended matrimonial cause or matter ..	1 0 0
In any other cause or matter	2 0 0"

3. The following paragraph shall be added after paragraph (*b*) of the Note to Fee No. 101 in the said Schedule:—

"(*c*) This Fee is not payable on filing an affidavit contained in the same document as a petition, answer or subsequent pleading in a matrimonial cause or matter."

4. The following Fee shall be substituted for Fees No. 107A and 107B in the said Schedule:—

Item	Fee	Document to be stamped
	£ s. d.	
"107A. For a photographic or office copy of any decree in a matrimonial cause or of a certificate that a decree has been made absolute	5 0	The fee book."

5. This Order may be cited as the Supreme Court Fees (Amendment) Order, 1947, and shall come into operation on the first day of May, 1947.

Dated the 23rd day of April, 1947.

Jowitt, C.
Merriman, P.
F. L. C. Hodson, J.
G. St. C. Pilcher, J.

Lords Commissioners of His Majesty's Treasury.

C. James Simmons,
Wm. Hannan.

(*) 15 & 16 Geo. 5. c. 49. (†) 19 & 20 Geo. 5. c. 23.
(‡) 42 & 43 Vict. c. 58. (§) S.R. & O. 1930 (No. 579) p. 1728.

S.R. & O., 1947, No. 773/L.13

SUPREME COURT, ENGLAND

SITTINGS

THE CIVIL BUSINESS (NORWICH) ORDER, 1947

DATED APRIL 24, 1947

I, the Right Honourable Rayner Lord Goddard, Lord Chief Justice of England, in exercise of the powers vested in me by the Circuits (Civil Business) Order, 1947(*), and all other powers enabling me in this behalf and with the sanction of the Lord Chancellor, do hereby order and direct as follows:—

1. Commencing with the Autumn Assizes, 1947, and until further order, Civil business generally shall be taken on the Autumn Circuit at Norwich.

2. This Order may be cited as the Civil Business (Norwich) Order, 1947.

Dated the 24th day of April, 1947.

Goddard, C.J.
Jowitt, C.

(*) S.R. & O. 1947 No. 195.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 732. **Coal Industry Nationalisation** (Central Valuation Board) Regulations. April 23.
No. 737. **County Court** (No. 1) Rules. April 22.
No. 738. **Food** (Licensing of Retailers) (Amendment) Order. April 23.
No. 757. **Labelling of Food** (Amendment) Order. April 25.
No. 773. **Supreme Court.** Civil Business (Norwich) Order. April 24.
No. 721. Supreme Court (Non-Contentious Probate) Fees Order. April 15.
No. 749. Supreme Court Fees (Amendment) Order. April 23.

HOUSE OF COMMONS PAPERS (SESSION 1946–47)

No. 85. **Select Committee on Statutory Rules and Orders.** 3rd and 4th Reports, with an Appendix.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Mr. H. P. Bagott, solicitor, of Kingswinford, Staffordshire, left £179,584. He stated: "In view of the projected legislation on public health I make no provision as intended for the Guest Hospital, with which I have been associated for many years." He left £500 each to the S.P.G. and the Universities Mission to Central Africa.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has nominated THE HONOURABLE MR. JUSTICE SINGLETON to be *ex-officio* Commissioner for England under the Railway and Canal Traffic Act, 1888.

The following appointments are announced in the Colonial Legal Service :—

Mr. R. A. CAMPBELL to be Resident Magistrate, Kenya ; Mr. M. W. DENNISON to be Crown Counsel, Northern Rhodesia ; Mr. A. E. OTTO to be Assistant Registrar-General, Lands and Mines Department, Tanganyika ; Mr. A. MCKISACK, Attorney-General, Gibraltar, to be Attorney-General, Zanzibar.

Mr. STEPHEN G. HOWARD has been appointed Chairman of the Cambridgeshire Quarter Sessions and Mr. EUSTACE BOWLES Deputy Chairman of the Quarter Sessions of the County of Salop.

Mr. W. B. FRAMPTON has been appointed as fourth magistrate at Bow Street Court.

Mr. JOHN BUSSÉ has been appointed Recorder of Burton-upon-Trent.

Mr. HAROLD HEATHCOTE-WILLIAMS has been appointed Recorder of Tiverton.

Mr. A. A. WALTER has been appointed Official Receiver in Bankruptcy for Liverpool, Birkenhead, Warrington and Wigan.

Mr. J. D. CASSWELL, K.C., and Mr. W. T. ELVERSTON have been elected Masters of the Bench of the Middle Temple.

Notes

Barristers whose professional addresses in the United Kingdom do not appear in the 1946 Law List may obtain voting papers for the coming election to fill the twenty-four vacancies upon the General Council of the Bar, by applying personally or in writing to the office of the Council, 5 Stone Buildings, Lincoln's Inn, W.C.2.

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 22nd April, 1947 (Chairman, Mr. H. F. MacMaster), the motion " That the present policy of the Chancellor of the Exchequer will ruin the country " was carried by three votes, there being twenty members and six visitors present.

On Tuesday, 29th April, 1947 (Chairman, Miss Ruth Eldrdge), the motion " That the case of *Adams* v. *Naylor* [1946] A.C. 543 was wrongly decided " was carried by four votes, there being eleven members and three visitors present.

Wills and Bequests

Mr. H. A. Baker, barrister-at-law, of Haslemere, left £56,599.

Mr. L. J. Bush, solicitor, of Tiverton, Devon, left £67,242, with net personalty £53,543.

Mr. W. Dommett, solicitor, of Anerley, left £23,981.

Mr. H. S. Gee, solicitor, of Bishop's Stortford, Hertfordshire, left £209,614.

Mr. J. Honey, solicitor, of Streatham, left £37,685, with net personalty £36,350.

COURT PAPERS

SUPREME COURT OF JUDICATURE

EASTER SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., May 12	Mr. Blaker	Mr. Hay	Mr. Farr
Tues., ,, 13	Andrews	Farr	Blaker
Wed., ,, 14	Jones	Blaker	Andrews
Thurs., ,, 15	Reader	Andrews	Jones
Fri., ,, 16	Hay	Jones	Reader
Sat., ,, 17	Farr	Reader	Hay

	Group A.		Group B.	
	Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn Parry *Non-Witness.*	Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., May 12	Mr. Jones	Mr. Reader	Mr. Andrews	Mr. Blaker
Tues., ,, 13	Reader	Hay	Jones	Andrews
Wed., ,, 14	Hay	Farr	Reader	Jones
Thurs., ,, 15	Farr	Blaker	Hay	Reader
Fri., ,, 16	Blaker	Andrews	Farr	Hay
Sat., ,, 17	Andrews	Jones	Blaker	Farr

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price May 5 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	114¼	3 9 10	2 4 2
Consols 2½%	JAJO	95½	2 12 4	—
War Loan 3% 1955–59	AO	106⅜	2 16 4	2 2 0
War Loan 3½% 1952 or after	JD	105⅜	3 6 2	2 7 2
Funding 4% Loan 1960–90	MN	118	3 7 10	2 7 6
Funding 3% Loan 1959–69	AO	106¼	2 16 4	2 7 4
Funding 2½% Loan 1952–57	JD	105	2 12 5	1 13 7
Funding 2½% Loan 1956–61	AO	103	2 8 7	2 2 6
Victory 4% Loan Av. life 18 years	MS	119½	3 6 11	2 12 6
Conversion 3½% Loan 1961 or after	AO	111¼	3 2 9	2 10 4
National Defence Loan 3% 1954–58	JJ	106	2 16 7	1 18 7
National War Bonds 2½% 1952–54	MS	103	2 8 7	1 18 9
Savings Bonds 3% 1955–65	FA	106	2 16 7	2 3 5
Savings Bonds 3% 1960–70	MS	106⅛	2 16 4	2 8 2
Treasury 3%, 1966 or after	AO	106⅛	2 16 4	2 8 9
Treasury 2½%, 1975 or after	AO	96½	2 11 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101¼	2 19 1	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	111⅛	2 13 10	2 10 5
Sudan 4½% 1939–73 Av. life 16 years	FA	121¼	3 14 1	2 16 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	—
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	2 9 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101⅛	2 9 3	—
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	111⅛	3 11 9	2 5 9
Australia (Commonw'h) 3½% 1964–74	JJ	110	2 19 1	2 10 4
*Australia (Commonw'h) 3% 1955–58	AO	104	2 17 8	2 9 5
†Nigeria 4% 1963	AO	119⅛	3 6 11	2 10 2
*Queensland 3½% 1950–70	JJ	104	3 7 4	—
Southern Rhodesia 3½% 1961–66	JJ	112⅛	3 2 3	2 8 10
Trinidad 3% 1965–70	AO	106	2 16 7	2 11 3
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100⅛	2 19 8	—
*Leeds 3½% 1958–62	JJ	107	3 0 9	2 10 2
*Liverpool 3% 1954–64	MN	105	2 17 2	2 4 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	122⅛	2 17 2	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	100xd	3 0 0	—
*London County 3½% 1954–59	FA	108⅛	3 4 6	2 3 11
*Manchester 3% 1941 or after	FA	100	3 0 0	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 7
Met. Water Board "A" 1963–2003	AO	103⅛	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	101	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	103	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 7
Nottingham 3% Irredeemable	MN	107	2 16 1	—
Sheffield Corporation 3½% 1968	JJ	115	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	125	3 4 0	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132⅛	3 15 6	—
Gt. Western Rly. 5% Preference	MA	119½	4 3 8	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.

" THE SOLICITORS' JOURNAL "

Editorial, Publishing and Advertisement Offices : 88–90, Chancery Lane, London, W.C.2. Telephone : Holborn 1403.

Annual Subscription : Inland, £3 ; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication)